IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3762 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NILESH MANSUKHLAL TOLIYA AND ANOTHER
Versus
STATE OF GUJARAT AND ANOTHER

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MR MM TIRMIZI for the applicants.
MR PD BHATE, APP for Respondent No.1.
MR ANSHIN H DESAI for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 09/12/2005

ORAL JUDGMENT

1. Instead of approaching Civil Court for getting her rights adjudicated as per the provisions of the Bombay Rent Act, the complainant has chosen to adopt a short-circuit formula by filing a criminal complaint in connection with dispute, which is purely of civil nature and as per the averments made in the complaint, no criminality involved in it.

The facts which are not in dispute are as under:

2. There is an immovable property situated in the city of Jamnagar. The petitioners had purchased the said property wherein 9 tenants were occupying different portions of the said property. One such portion was occupied by Vallabhdas Ved, [father of respondent No. 2 herein]. The said Vallabhdas died on 21st September 1998. As per the averments in the application, the said Vallabhdas executed a will dated 2.6.1995 in favour of his son, Rajesh, by which he bequeathed the aforesaid tenanted property to Rajesh. Pankaj, another son of the deceased Vallabhdas, filed a Civil Suit being Special Civil Suit No. 141 of 1998 challenging the will executed by his deceased father on the ground that the will is bogus and that the property should be partitioned amongst the heirs of the deceased Vallabhdas. In the aforesaid suit, respondent No.2, [original complainant herein] and another sister filed affidavits stating that the will executed by their father is not a genuine will. The said affidavits are annexed with the present application at annexure 'C'. Ultimately, the plaintiff of the said suit,

Pankaj, withdrew the suit, as he settled his dispute with his brother. The respondent No.2 along with another sister thereafter filed a substantive suit against their brothers, being Regular Civil Suit No. 966 of 2000 challenging the will in question executed by their father on various grounds. The said suit is still pending adjudication. The respondent No.2, original complainant has also filed a criminal complaint, which is at Anneuxre 'A' and the same is registered as Criminal Case No. 2563 of 2003. The aforesaid case is filed for offences punishable under sections 427, 34, 114 and 120.B of the Indian Penal Code. As per the averments in the said complaint, father of the complainant was a tenant of a premises situated on Central Bank Road, Jamnagar and was running his business in the name of Saurshtra Gruh Udyog. It is stated in the said complaint that the father of the complainant died on 21.9.1998 and the complainant along with her brothers and sister became the tenants by way of succession as the heirs of their deceased father and that the complainant has equal share in the tenanted property and in the goodwill of the shop. As per the averments made in paragraph 3 of the complaint, the accused, who are partners of Shreeji Builders have demolished the tenanted shop by taking advantage of earthquake, which had taken place in the town. It is also stated in paragraph 6 of the complaint that the complainant, who was residing at Baroda, went to Jamnagar on 16.6.2001 and it was noticed by her that the tenanted property was destroyed by the accused. Under the said circumstances, the aforesaid complaint is filed. Learned Chief Judicial Magistrate

passed an order of inquiry under section 202 of the Criminal Procedure Code against which the petitioner has approached this Court by way of the present application for quashing the complaint under the provisions of section 482 of the Criminal Procedure Code.

3. Learned advocate for the petitioner, Mr. Tirmizi submitted that the petitioners, who are the owners of the property in question wanted to develop the said property and after settling the dispute with the brother of the complainant in whose favour the deceased original tenant – father of the complainant, had bequeathed the property by will, the petitioners have started demolishing the old structure. It is submitted by Mr. Tirmizi that in any case, it is not in dispute that the petitioners are the owner of the property in question, and, therefore, as owner, the petitioners are entitled to develop the property. Mr. Tirmizi submitted that dispute regarding the property in question was settled with the brother of the complainant in whose favour the father of complainant had bequeathed the property. He, therefore, submitted that the petitioners are not concerned with the interse dispute between the complainant and her brothers/sister. Mr. Tirmizi further submitted that so far as tenancy rights in the property in question are concerned, admittedly the complainant is residing at Baroda since long and was not doing business with the deceased tenant and in view of the clear provisions contained in the Rent Act, there was no question of there being any tenancy right in her

favour. It is submitted that filing of such complaint is nothing but an abuse of the process of law, and nothing is required to be investigated on the basis of such complaint. Mr. Tirmizi further submitted even reading the complaint, the complainant has nowhere stated that she was residing at Jamnagar and was doing business with her father at any point of time.

4. Mr. Anshin Desai, learned advocate for the original complainant, on the other hand submitted that the the complainant being the heir of the deceased father, is entitled to have the tenancy right and the so called will executed by the father in favour of one of his brothers, Rajesh, is not a genuine will and, therefore, under the provisions of the Hindu Succession Act, the complainant is entitled to inherit the property of her father equally with other heirs, i.e. brothers and other sister. He submitted that the petitioners could not have destroyed the premises and by destroying the premises, they have committed an offence punishable under the provisions of section 427 of the Indian Penal Code.

5. Mr. P.D. Bhate, learned Additional Public Prosecutor submitted that considering the provisions of Rent Act, even remotely it cannot be said that the complainant has got any right in the property in question and only in order to extract money from the accused who have subsequently become the owner of the property in question, this frivolous complaint is filed.

6. I have heard learned advocates in detail. In my view, this is a fit case in which the complaint at Annexure 'A' is required to be quashed as I am of the view that filing of such compliant is nothing but an abuse of the process of law. Now-a-days the tendency of resorting to criminal machinery without resorting to civil remedy is increasing. This case is one of such cases where the complainant, without resorting to civil remedy, has filed this complaint with an oblique motive. As per the admitted facts, the complainant, after her marriage, is residing at Baroda since long. It is also undisputed that the suit premises is at Jamangar. The petitioners, after purchasing the property wanted to develop the said property. Deceased father of the complainant was a tenant of the part of the property in question and by executing a will, he bequeathed the tenancy rights to Rajesh, a brother of the complainant. Whether the will is genuine or not is not required to be adjudicated in the present proceedings. However, so far as the right of the petitioner in the suit property is concerned, the same is covered under the provisions of section 5.(11).(C). of the Rent Act. The said section reads as under:

> 5 (11). "tenant" means any person by whom or on whose account rent is payable for any premises and includes -
>
> (a). xxx xxx xxx xxx
>
> (b). xxx xxx xxx xxx
>
> (c) (i). xxx xxx xxx

> (c). (ii). In relation to premises let for business, trade or storage, any member of the tenant's family carrying on business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage as the case may be, in the said premises and as may be decided in default of agreement by the Court. ”

7. So far as the business premises is concerned, as per the definition provided in the Rent Act, heirs of the original tenant doing business with the original tenant are entitled to continue the tenancy rights. The complaint has not stated in the complaint that she was doing business with the deceased at the suit premises, but she is asserting her right as heir of the deceased tenant on the ground that she is entitled to have a share in the property with the other heirs of the deceased father. Whether the complainant can ultimately claim a share in the property of her deceased father is a different issue altogether. If the complainant successfully challenges the will of her father and establishes her right to any share in other properties of the deceased father, her entitlement to a share in such properties is also a different issue altogether. However, so far as the tenanted property is concerned, there is a specific provision in the Rent Act by which only those heirs of the deceased tenant who were doing business with the deceased tenant is entitled to inherit the tenancy rights in the property. The complainant who is residing after her marriage with her husband at

a different place altogether, and in a different city altogether, is trying to ascertain her right in a tenanted property only on the basis of the assertion that as a heir of the deceased father, she is entitled to inherit the property. As stated earlier, in the entire complaint, there is not a single averment that she was taking part in the business and was doing business in the past with her deceased father. Even if there is a dispute interse amongst the heirs of the deceased, there is a provision in the Act to resolve such dispute. Considering the said aspect, especially when there is no such averment in the complaint that the complainant was taking part in the business and was doing business with her father, the Magistrate has committed an error in passing an order of inquiry under section 202 of the Criminal Procedure Code. In such a proceedings, rigorous inquiry about title of the property cannot be allowed to be made. The petitioner, instead of invoking the provisions of Rent Act by approaching the Civil Court has rushed to the criminal court by filing the complaint. Mr. Desai also frankly submitted that the complainant is residing at Baroda after her marriage and she is not residing at Jamnagar where the property is situated. Considering the aforesaid factual aspect, which is not in dispute, I find substance in the argument of Mr. Tirmizi that the petitioner has filed the complaint only with some oblique motive and to harass the petitioners, who have purchased the property for its development. Reading the complaint as a whole and considering the aforesaid factual aspect, Section 427 of the Indian Penal Code cannot be said to have been attracted in the present case. In that

view of the matter, it is not necessary for this Court to examine in this proceedings the question whether the will executed by the deceased father of the complainant was proper or whether the deceased father of the complainant had executed will transferring the tenancy rights in favour of one of his sons.

8. It is also not in dispute that one of the heir had challenged the will, and the complainant had also filed an affidavit in that proceedings, supporting the contention that the will is not genuine. However, that suit is withdrawn and is no longer pending. If at all the complainant-respondent No.2 has any right in other property of the deceased tenant, she can legitimately agitate the same before the appropriate forum. Even regarding tenanted property, appropriate remedy is provided in the Rent Act. Admittedly, no such proceedings are taken out and no order for restoring the possession of the property in question is passed by the competent Court.

9. The petitioner, instead of agitating the issue before appropriate civil court, has approached the criminal court by way of aforesaid complaint. Mr. Desai, for respondent No. 2 has also taken instructions from his client. However, he submitted that respondent No.2 is not willing to take out proceedings before the Rent Court for adjudicating her right. Considering the aforesaid aspect, in my view, continuation of such complaint would be nothing but an abuse of the process of law. The owner of the

property wants to develop the property by removing the old structure and that cannot be said to be an offence. The respondent no.2 has not even said in her complaint about her tenancy rights in the suit property but says only about her right to a share in the suit property as a heir of her deceased father, which is altogether a different issue, and no offence can be said to have been made out in the complaint. Learned Magistrate, before holding inquiry under the provisions of the Criminal Procedure Code should have considered this aspect in a proper manner after going through the provisions of the Bombay Rent Act. Considering the aforesaid aspects of the matter and considering the fact that the petitioner has not even stated anything in the complaint about inheriting the tenancy rights as per the provisions of the Rent Act, the complaint is required to be quashed.

10. In light of what is stated above, the compliant registered as Criminal Case No. 2563 of 2003 before Chief Judicial Magistrate, Jamnagar as well as the order dated 20.7.2001 passed by the learned Magistrate for inquiry under section 202 are quashed. This application stands allowed accordingly. Rule is made absolute accordingly.

[P. B. MAJMUDAR, J.]

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